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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIABY  DEPUTY

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 ARACELI GOCOBACHI

10

11 UNITED STATES DISTRICT COURT  
 12 SOUTHERN DISTRICT OF CALIFORNIA

14 SAMANTHA LOPEZ, a minor, by and  
 through her Guardian Ad Litem Liliana  
 15 Cortez; SAMANTHA LOPEZ, a minor, by  
 and and through her Guardian Ad Litem  
 16 Liliana Cortez, as Successor in Interest of  
 David A. Lopez, deceased

17 Plaintiff,

18 v.

19 THE COUNTY OF SAN DIEGO, a  
 20 municipality; THE CITY OF VISTA a  
 municipality; SAN DIEGO COUNTY  
 21 SHERIFF WILLIAM KOLENDER,  
 individually and in his official capacity;  
 22 SAN DIEGO COUNTY SHERIFF  
 OFFICER SHAWN AITKEN, individually  
 23 and in his official capacity, SAN DIEGO  
 COUNTY SHERIFF OFFICER JACOB  
 24 PAVLENKO, individually and in his official  
 capacity; SAN DIEGO COUNTY DEPUTY  
 25 OFFICER JONATHAN FECTEAU,  
 individually and in his official capacity;  
 26 ARACELI GOCOBACHI, an individual;  
 DOES 1 through 20, inclusive.

27 Defendants

13 } CASE NO.  
 14 } CV 07-2028-JLS(WMc)

CROSS COMPLAINT

1. FEDERAL CIVIL RIGHTS  
VIOLATIONS;
2. MONELL CLAIM

Supplemental State Tort Claims:

3. WRONGFUL DEATH;
4. VIOLATION OF RIGHT TO  
FAMILIAL RELATIONSHIP;
5. BATTERY.

28 } DECLARATION OF  
SUCCESSOR IN INTEREST;  
CERTIFIED COPY OF  
MARRIAGE CERTIFICATE;

DEMAND FOR JURY TRIAL

ARACELA GOCOBACHI as successor in interest as to Decedent DAVID A. LOPEZ, and as wife of Decedent DAVID A. LOPEZ

## Defendant and Cross-Complainant

4 | v.

5 COUNTY OF SAN DIEGO, a Public Entity  
of the State of California;  
6 SHAWN AITKEN, a San Diego County  
Deputy Sheriff, individually and as a San  
7 Diego County Deputy Sheriff; JACOB  
PAVLENKO, a San Diego County Deputy  
8 Sheriff, individually and as a San Diego  
County Deputy Sheriff; JONATHAN  
9 FECTEAU, a San Diego County Deputy  
Sheriff individually and as a San Diego  
10 County Deputy Sheriff; DOES 1 through 10

## Cross-Defendants

## INTRODUCTION

1.

15 This cross-complaint is based on upon the Federal Civil Rights Act of  
16 1871 (42 United States Code, section 1983), and the California State claims  
17 provided by California Civil Code section 52.1(a)(b) and California Code of  
18 Civil Procedure section 377.11.

19        Cross- Complainant ARACELA GOCOBACHI , as decedent's successor  
20 in interest as to the decedent DAVID LOPEZ, as defined in California Code of  
21 Civil Procedure section 377.11, and as wife of DAVID LOPEZ, herein  
22 complains of acts and omissions which contributed to and caused the death of her  
23 husband, DAVID LOPEZ, Cross-Complainant's Decedent. Said acts occurred  
24 outside a residence at the Vista Terraces Mobile Home Park in Vista on or about  
25 October 21, 2006.

26 Cross-Complainant's Declaration of Successor In Interest is attached as  
27 Exhibit A. A Certified Copy of Certificate Of Marriage to Cross-complainant's  
28 decedent is attached as Exhibit B.

1 On or about April 20, 2007, Plaintiffs filed a claim with the City of Vista  
2 for the injuries and losses alleged herein. On or about May 10, 2007, the claim  
3 was denied. On or about April 20, 2007, Plaintiffs filed a claim with the County  
4 of San Diego for the injuries and losses alleged herein. On or about May 21,  
5 2007, the claim was denied.

6 Cross-complainant ARACELA GOCOBACHI, as decedent's successor in  
7 interest as to the decedent DAVID LOPEZ and as wife of the decedent DAVID  
8 LOPEZ, alleges as follows:

## **PLAINTIFFS' FIRST CAUSE OF ACTION**

## **FEDERAL CIVIL RIGHTS VIOLATION**

2.

12 This cause of action arises under 42 United States Code sections 1983 and  
13 1988, wherein Cross-Complainant ARACELA GOCOBACHI seek to redress a  
14 deprivation under color of law of a right, privilege, or immunity secured to  
15 Cross-Complainant's decedent DAVID LOPEZ, and to Cross-Complainant  
16 ARACELA GOCOBACHI, by the Fourth and Fourteenth Amendments of the  
17 United States Constitution.

3.

19 Jurisdiction is conferred upon this Court by 28 United States Code section  
20 1331 (federal question) and 28 United States Code section 1343, subdivision 3  
21 (civil rights). Venue lies in the Central District of California, the judicial district  
22 in which the claim arose, pursuant to 28 United States Code section 1391,  
23 subdivision b.

4

25 At all times material herein, Cross-Defendants SHAWN AITKEN,  
26 JACOB PAVLENKO, and JONATHON FECTEAU and Cross-Defendants  
27 DOES 1 through 10, inclusive, and each of them, were duly appointed, qualified  
28 and acting County of San Diego Deputy Sheriffs or Agents, and at all times

1 herein mentioned each defendant was acting within the course and scope of such  
2 employment and under color of law.

3 5.

4 The true names of Cross-Defendants DOES 1 through 10, inclusive and  
5 each of them, is not known to Cross-Complainant who, therefore, sues said  
6 Cross-Defendants by such fictitious names, but upon ascertaining the true  
7 identity of a DOE Cross-defendant, Cross-Complainant will substitute same, or  
8 seek leave to do so, in lieu of such fictitious name.

9 6.

10 Cross-Complainant is informed and believe and based thereon allege that  
11 each said DOE Cross-Defendant is in some way responsible for the death of  
12 Cross-Complainant's Decedent herein complained of.

13 7.

14 The acts, omissions, and events herein described and complained of  
15 occurred on or about October 21, 2006, at or near a residence at the Vista  
16 Terraces Mobile Home Park in the City of Vista, County of San Diego.

17 8.

18 On or about the date, time, and place aforementioned, Cross-Defendants  
19 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
20 Cross-Defendants DOES 1 through 10, inclusive, and each of them, deprived  
21 Cross-Complainant's Decedent of the right to security of the person from  
22 unreasonable search and seizure and unjustified force and bodily injury in  
23 violation of the Fourth Amendment to the United States Constitution, and of  
24 substantive due process of law in violation of the Fourteenth Amendment to the  
25 United States Constitution, in that at or about said date, time and place, said  
26 Cross-Defendants knowingly and wilfully acted as herein described.

27 9.

28 On or about the date, time, and place aforementioned, Cross-Defendants

1 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
2 Cross-Defendants DOES 1 through 10, inclusive, and each of them, conspired to  
3 deprive plaintiffs' decedent of the right to equal protection of the laws based on a  
4 racially motivated bias against Cross-Complainant's Decedent DAVID LOPEZ  
5 in violation of the Fourteenth Amendment to the United States Constitution, in  
6 that at or about said date, time and place, said defendants knowingly and wilfully  
7 acted as herein described.

8 10.

9 On or about the date, time, and place aforementioned, Cross-Defendants  
10 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
11 Cross-Defendants DOES 1 through 10, inclusive, and each of them, deprived  
12 Cross-Complainant ARACELA GOCOBACHI, wife of decedent DAVID  
13 LOPEZ, of familial companionship and society, and of substantive due process  
14 of law in violation of the Fourteenth Amendment to the United States  
15 Constitution, in that at or about said date, time and place, said Cross-Defendants  
16 knowingly and wilfully acted as herein described.

17 11.

18 On or about the date, time, and place aforementioned, Cross-Defendants  
19 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
20 Cross-Defendants DOES 1 through 10, responded to a call to investigate an  
21 incident outside a residence at the Vista Terraces Mobile Home Park in the City  
22 of Vista, County of San Diego.

23 12.

24 On or about the date, time, and place aforementioned, Cross-  
25 Complainant's Decedent DAVID LOPEZ was found outside a residence at the  
26 Vista Terraces Mobile Home Park in the City of Vista, County of San Diego.

27 13.

28 On or about the date, time, and place aforementioned, Cross-

1 Complainant's Decedent DAVID LOPEZ was carrying no weapons.

2 14.

3 On or about the date, time and place aforementioned, Cross-Complainant's  
4 Decedent DAVID LOPEZ was confronted by Cross-Defendants SHAWN  
5 AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and Cross-  
6 Defendants DOES 1 through 10 outside a residence at the Vista Terraces Mobile  
7 Home Park in the City of Vista. Decedent DAVID LOPEZ ran from the officers.  
8 After a short foot pursuit of Decedent DAVID LOPEZ, the Cross-Defendants and  
9 each of them, while under no threat from Decedent DAVID LOPEZ and with  
10 Decedent DAVID LOPEZ posing no threat to others, shot Decedent DAVID  
11 LOPEZ numerous times in the back. Decedent DAVID LOPEZ suffered injury  
12 from the shooting, and after some period of time to be determined, death.

13 18.

14 Cross-Defendants SHAWN AITKEN, JACOB PAVLENKO, and  
15 JONATHON FECTEAU, and Cross-Defendants DOES 1 through 10 prepared,  
16 cooperated in, encouraged, abetted, condoned and approved the preparation,  
17 submission, filing and use of oral and written reports and statements concerning  
18 the events surrounding the shooting of plaintiff's decedent which, as Cross-  
19 Defendants each at all relevant times well knew and intended, falsely alleged and  
20 charged that the death of plaintiff's decedent was justified, and which reports and  
21 statements, as Cross-Defendants at all relevant times knew and intended, omitted  
22 and misrepresented the shooting and use of unreasonable, unnecessary and  
23 brutal force upon plaintiff's decedent by Cross-Defendants.

24 19.

25 The aforescribed false reports, statements and misrepresentations were  
26 knowingly made, encouraged, supported, abetted, approved and condoned by  
27 each defendant pursuant to a common plan, conspiracy, and agreement with the  
28 intent and for the purpose of causing Cross-Complainant ARACELA

1 GOCOBACHI to be mislead and to avert investigation of and punishment and  
 2 discipline for Cross-Defendants' own aforescribed misconduct.

3 PLAINTIFF'S SECOND CAUSE OF ACTION

4 VIOLATION OF FEDERAL CIVIL RIGHTS, MONELL CLAIM

5 20.

6 Cross-Complainant ARACELA GOCOBACHI, as decedent's successor in  
 7 interest as to the decedent DAVID LOPEZ, as defined in California Code of  
 8 Civil Procedure section 377.11, refers to and repleads each and every allegation  
 9 contained in paragraphs 1 through 19 of this Cross-Complaint and by this  
 10 reference incorporates the same herein and makes each a part hereof.

11 21.

12 On and for some time prior to October 21, 2006, Cross-Defendants  
 13 COUNTY OF SAN DIEGO, and DOES 1 through 10, and each of them, deprived  
 14 Cross-Complainant's Decedent DAVID LOPEZ of rights and liberties secured to  
 15 him by the Fourth, Fifth, and Fourteenth Amendments of the United States  
 16 Constitution, in that said Cross-Defendants and their supervising and managerial  
 17 employees, agents, and representatives, acting with deliberate indifference to the  
 18 rights of persons with whom the police come into contact, and of Cross-  
 19 Complainant and Cross-Complainant's Decedent and of persons in their class,  
 20 situation, and comparable position in particular, knowingly maintained, enforced,  
 21 and applied a policy and practice of inadequately supervising, training, and  
 22 controlling Cross-Defendants SHAWN AITKEN, JACOB PAVLENKO, and  
 23 JONATHON FECTEAU, and Cross-Defendants DOES 1 through 10, inclusive,  
 24 and each of them, whom Cross-Defendants COUNTY OF SAN DIEGO, and  
 25 DOES 1 through 10, inclusive, each knew, or in the exercise of reasonable care  
 26 should have known, performed their duties in the aforescribed manner.

27 22.

28 By reason of the aforescribed policies and practices of Cross-Defendant

1 COUNTY OF SAN DIEGO, and DOES 1 through 10, and each of them, Cross-  
 2 Complainant's Decedent DAVID LOPEZ was killed and sustained great injuries  
 3 as described herein.

4 23.

5 By reason of the aforescribed acts and omissions of Cross-Defendants  
 6 and each of them, Cross-Complainant ARACELA GOCOBACHI was required to  
 7 and did retain an attorney to institute and prosecute the within action, and to  
 8 render legal assistance to Cross-Complainant ARACELA GOCOBACHI that she  
 9 might vindicate the loss and impairment of her aforementioned rights; and by  
 10 reason thereof, Cross-Complainant ARACELA GOCOBACHI requests payment  
 11 by Cross-Defendants of a reasonable sum as and for attorney's fees pursuant to  
 12 42 United States Code section 1988.

13 **SUPPLEMENTAL STATE CLAIMS**

14 24.

15 Jurisdiction is conferred upon this court by Rule 18, Federal Rules of Civil  
 16 Procedure. On or about April 20, 2007, pursuant to Government Code Section  
 17 910 et seq., and in substantial compliance therewith, Plaintiffs filed a claim with  
 18 the City of Vista for the injuries and losses alleged herein. On or about May 10,  
 19 2007, the claim was denied. On or about April 20, 2007, pursuant to  
 20 Government Code Section 910 et seq., and in substantial compliance therewith,  
 21 Plaintiffs filed a claim with the County of San Diego for the injuries and losses  
 22 alleged herein. On or about May 21, 2007, the claim was denied.

23 **PLAINTIFF'S THIRD CAUSE OF ACTION**

24 **WRONGFUL DEATH**

25 25.

26 Cross-Complainant ARACELA GOCOBACHI, as decedent's successor in  
 27 interest as to the decedent DAVID LOPEZ, as defined in California Code of  
 28 Civil Procedure section 377.11, refers to and repleads each and every allegation

1 contained in paragraphs 1 through 19 of this Cross-Complaint and by this  
 2 reference incorporates the same herein and makes each a part hereof.

3 26.

4 As a result of the aforescribed acts and omissions of Cross-Defendants  
 5 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
 6 DOES 1-10 and each of them, Cross-Complainant's Decedent DAVID LOPEZ,  
 7 represented by decedent's successor in interest Cross-Complainant ARACELA  
 8 GOCOBACHI, sustained losses by his wrongful death; and by reason therefore,  
 9 decedent's successor in interest claims damages from Cross-Defendants for  
 10 injuries suffered by decedent DAVID LOPEZ as defined in California Code of  
 11 Civil Procedure section 377.11 and in an amount to be proven at trial.

12 PLAINTIFF'S FOURTH CAUSE OF ACTION

13 VIOLATION OF RIGHT TO FAMILIAL RELATIONSHIP

14 27.

15 Cross-Complainant ARACELA GOCOBACHI, as wife of the decedent  
 16 DAVID LOPEZ, refers to and repleads each and every allegation contained in  
 17 paragraphs 1 through 19 of this Cross-Complaint and by this reference  
 18 incorporates the same herein and makes each a part hereof.

19 28.

20 As a result of the aforescribed acts and omissions of Cross-Defendants  
 21 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
 22 DOES 1-10 and each of them, Cross-Complainant ARACELA GOCOBACHI, as  
 23 wife of DAVID LOPEZ, has suffered a deprivation of familial companionship,  
 24 consortium, and society by the loss of her husband.

25 29.

26 As a result of the aforescribed acts and omissions of Cross-Defendants  
 27 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
 28 DOES 1-10 and each of them, Cross-Complainant ARACELA GOCOBACHI, as

1 wife of DAVID LOPEZ, sustained great physical and mental pain and suffering,  
 2 shock to his nervous system, and he suffered and continues to suffer great  
 3 anguish, anxiety, humiliation, fear, anger, depression, nervousness and emotional  
 4 distress.

5 30.

6 By reason of the aforescribed acts and omissions of Cross-Defendants  
 7 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
 8 DOES 1-10 and each of them, Cross-Complainant ARACELA GOCOBACHI, as  
 9 wife of DAVID LOPEZ, will in the future require medical, psychological, and  
 10 psychiatric care and treatment; and by reason thereof, plaintiffs will in the future  
 11 incur hospital, doctor, x-ray, medical, pharmaceutical and incidental expenses in  
 12 an amount as provided at trial.

13 31.

14 As a result of the aforescribed acts and omissions of Cross-Defendants  
 15 SHAWN AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and  
 16 DOES 1-10 and each of them, Cross-Complainant's Decedent DAVID LOPEZ  
 17 did require medical care and treatment, transportation and funeral services; and  
 18 by reason thereof, Decedent's successors in interest Cross-Complainant  
 19 ARACELA GOCOBACHI claims damages from Cross-Defendants SHAWN  
 20 AITKEN, JACOB PAVLENKO, and JONATHON FECTEAU, and DOES 1-10  
 21 and each of them in an amount to be proven at trial.

22 32.

23 The aforescribed acts and omissions of each defendant was done by each  
 24 defendant knowingly, intentionally and maliciously for the purpose of  
 25 harassment, oppression, and inflicting injury upon plaintiff's decedent and in  
 26 reckless, wanton and callous disregard of plaintiff's decedent's safety, security,  
 27 and civil rights; and by reason thereof, Cross-Complainant ARACELA  
 28 GOCOBACHI, as Decedent's successors in interest as to the decedent DAVID

1 LOPEZ claim exemplary and punitive damages from each Defendant except  
 2 Defendant COUNTY OF SAN DIEGO.

3 CROSS-COMPLAINANT'S FIFTH CAUSE OF ACTION

4 BATTERY

5 33.

6 Cross-Complainant ARACELA GOCOBACHI, as decedent's successor in  
 7 interest as to the decedent DAVID LOPEZ, as defined in California Code of  
 8 Civil Procedure section 377.11, refers to and repleads each and every allegation  
 9 contained in paragraphs 1 through 19 of this Cross-Complaint and by this  
 10 reference incorporates the same herein and makes each a part hereof.

11 34.

12 The acts of Cross-Defendants SHAWN AITKEN, JACOB PAVLENKO,  
 13 and JONATHON FECTEAU, and DOES 1-10 and each of them, described  
 14 herein, were without consent and caused the death of Cross-Complainant's  
 15 Decedent by gun shot.

16 WHEREFORE, Cross-Complainant ARACELA GOCOBACHI prays for  
 17 damages against Cross-Defendants and each of them, as follows:

18 1. General damages in the sum of \$2,000,000 from each individual  
 19 Cross-Defendant;

20 2. General Damages in the sum of \$1,000,000 from Defendant  
 21 COUNTY OF SAN DIEGO;

22 3. Medical, hospital, doctor, psychiatric, psychological, pharmacy, x-  
 23 ray, and incidental expenses as to Cross-Complainant and Cross-Complainant's  
 24 Decedent in an amount proved at trial;

25 4. Loss of future income and support as proved at trial;

26 5. Punitive and exemplary damages from each Cross-Defendant except  
 27 COUNTY OF SAN DIEGO, in the sum of \$50,000;

28 6. Reasonable attorney's fees, expenses, and costs of this litigation;

1           7. Such other and further relief as the Court deems appropriate and  
2 just.

DATED: June 29, 2008

  
GENARO LARA  
Attorney for Cross-Complainant  
ARACELA GOCOBACHI

## **CROSS-COMPLAINANT'S JURY DEMAND**

Cross-Complainant ARACELA GOCOBACHI hereby demands trial by jury.

11 | DATED: June 29, 2008

*Genaro Lara*  
GENARO LARA  
Attorney for Cross-Complainant  
ARACELA GOCOBACHI